

SL(5)724 – The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Regulations”) are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 were made on 15 June, and came into force on 17 June. They place obligations on operators of international passenger services arriving into Wales from outside the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to ensure that passengers travelling on those services are made aware of their obligations under the International Travel Regulations to provide information and, where relevant, isolate on their return to Wales.

The Regulations amend the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the Common Travel Area to possess notification of a negative coronavirus test. They also introduce a new requirement on operators of international passenger services arriving into Wales from outside the Common Travel Area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

The new requirements in relation to pre-departure testing came into effect for any travellers arriving in Wales from 4.00 am on Monday 18 January.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd



is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

Paragraph 3(1) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references regulation 6A(4)(a). The correct reference appears instead to be regulation 6A(4)(c).

Paragraph 3(1)(a) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references paragraph 8 of Schedule 2. The correct reference appears instead to be paragraph 7 of Schedule 2.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii): that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 15 January 2021.

In particular, we note the following paragraphs of the letter:

"These Regulations introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the common travel area to possess notification of a negative coronavirus test. The Regulations also introduce a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd



We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments to the International Travel Regulations and operator requirement provisions contained in these Regulations remain consistent with the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. ."

Section 5(5) of the European Union Withdrawal Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day, which was at 23:00 on 31 December 2020. The Charter therefore no longer forms part of domestic law. In light of this, it would assist the Committee to receive an explanation as to why reference to the Charter is made in the Explanatory Memorandum.

It is noted also that section 4 of the Explanatory Memorandum asserts the proportionality of the Regulations, and the Regulations themselves impose safeguards on information sharing in regulations 9(4) and (6).

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."

4. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

5. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The references to regulations 3(2), 3(3) and 3(4) in the third, fourth and fifth paragraphs respectively of the Explanatory Note are incorrect and should instead refer to regulations 3(3), 3(4) and 3(5) respectively.

It is accepted that the Explanatory Note does not form part of the Regulations. However, its inclusion is to assist citizens in accessing and understanding the new law implemented by the Regulations and, as such, it is desirable the correct references are used.



Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and the second merits reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.

